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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN QUINTANA,

Defendant and Appellant.

2d Crim. No. B292452
(Super. Ct. No. 2016037607)
(Ventura County)

Ivan Quintana appeals a judgment of conviction of second degree robbery, escape by force or violence, resisting an executive officer, battery upon a police officer, misdemeanor battery, and misdemeanor petty theft, with admissions that he suffered a prior serious felony and strike conviction and served a prior prison term. (Pen. Code, §§ 211, 4532, subd. (b)(2), 69, subd. (a), 243, subd. (c)(2), 242, 484, subd. (a), 667, subd. (a), 667, subds. (b)-(i), 667.5, subd. (b).)¹ We vacate Quintana's sentence and remand the matter to allow the trial court to determine whether

¹ All statutory references are to the Penal Code.

to strike the five-year enhancement imposed pursuant to section 667, subdivision (a)(1). We otherwise affirm.

FACTUAL AND PROCEDURAL HISTORY

Evidence presented at the preliminary examination established that on October 17, 2016, Quintana struck a realtor and took her purse as the realtor was assisting Quintana's mother. (Counts 5 & 6.) Later that day, Quintana struck a customer inside a credit union as the customer waited for teller assistance. Quintana took that customer's wallet and fled. (Count 1.)

Police officers later arrested Quintana. During the jail booking process, Quintana struck the booking deputy and fled the jail. The deputy soon caught and restrained Quintana in the parking lot. (Counts 2, 3, & 4.)

On July 30, 2017, Quintana entered a nolo contendere plea to second degree robbery, battery upon a police officer, and misdemeanor battery. (§§ 211, 243, subd. (c)(2), 242.) He also entered a guilty plea to escape by force or violence, resisting an executive officer, and misdemeanor petty theft. (§§ 4532, subd. (b)(2), 69, subd. (a), 484, subd. (a).) In addition, Quintana admitted that he suffered a prior serious felony and strike conviction and served a prior prison term. (§§ 667, subd. (a), 667, subds. (b)-(i), 667.5, subd. (b).)

On August 27, 2018, the trial court sentenced Quintana and, over the prosecutor's objection, struck Quintana's felony strike allegation. The court also struck Quintana's prior prison term allegation. Pursuant to the court's indicated sentence, the court then sentenced Quintana to a nine-year eight-month term. The sentence included a five-year enhancement for the prior serious felony conviction of section 667, subdivision (a)(1). The

court also imposed various fines and fees, and awarded Quintana 782 days of presentence custody credit.

Quintana appeals and contends that the newly enacted amendment to section 1385, permitting the trial court the discretion to dismiss five-year sentence enhancements imposed pursuant to section 667, subdivision (a)(1), applies to him because his case is not yet final. The Attorney General concedes and we agree.

DISCUSSION

Prior to 2019, trial courts were without authority to strike a prior serious felony conviction imposed pursuant to section 667, subdivision (a). (Former § 1385, subd. (b).) Senate Bill No. 1393 removed this prohibition. (Stats. 2018, ch. 1013, §§ 1, 2.) This legislation became effective on January 1, 2019. (*People v. Jones* (2019) 32 Cal.App.5th 267, 272.)

The new legislation applies to Quintana because his case is not yet final. (*In re Estrada* (1965) 63 Cal.2d 740, 744; *People v. Garcia* (2018) 28 Cal.App.5th 961, 973 [Senate Bill No. 1393 applies to all cases not yet final on its effective date].) “‘[A]n amendatory statute lessening punishment is presumed to apply in all cases not yet reduced to final judgment as of the amendatory statute’s effective date.’” (*People v. DeHoyos* (2018) 4 Cal.5th 594, 600.)

The case is remanded with directions to the trial court to decide, at a hearing at which Quintana has the right to be present with counsel, whether it will exercise its discretion to strike the prior serious felony conviction imposed pursuant to section 667, subdivision (a). If the court decides to strike the enhancement, Quintana shall be resentenced and the abstract of judgment amended accordingly and forwarded to the Department

of Corrections and Rehabilitation. If the court decides not to strike the enhancement, Quintana's original sentence shall remain in effect. The judgment is otherwise affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court of
Appeal, for Defendant and Appellant.

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